

**NOTICE TO STRUCTURAL ENGINEERING CONSULTANTS
CITY OF SAN JOSE
REQUEST FOR QUALIFICATIONS AND PROPOSAL**

The City of San Jose Public Works Department wishes to engage the services of a qualified consulting firm to perform the work defined within the attached document entitled “Request for Qualifications and Proposal for Structural Engineering Consultant Services for Julian Street Bridge at Coyote Creek Seismic Retrofit Project”.

If your firm wishes to be considered as a candidate for this assignment, please submit the original and two copies of the required proposal to:

KATY ALLEN, DIRECTOR
Department of Public Works
200 East Santa Clara Street, Tower Floor 7
San Jose, CA 95113-1905
Attention: Paul Izadyar

The proposal must be received at the above address no later than 12:00 Noon on Tuesday, October 17, 2006.

If you have questions concerning this RFQ/RFP, please contact Paul Izadyar at (408) 793-4127.

CITY OF SAN JOSE
DEPARTMENT OF PUBLIC WORKS

TRANSPORTATION AND DEVELOPMENT SERVICES DIVISION

200 E. SANTA CLARA STREET, TOWER FLOOR 7
SAN JOSE, CALIFORNIA 95113-1905

(408) 793-4127

RESPONSE DUE BY: 12:00 Noon on October 17, 2006

**REQUEST FOR QUALIFICATIONS AND PROPOSAL
FOR
STRUCTURAL ENGINEERING CONSULTANT SERVICES
FOR
JULIAN STREET BRIDGE AT COYOTE CREEK SEISMIC RETROFIT PROJECT**

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SECTION 1 – INTRODUCTION

- 1.1 The City of San Jose (hereinafter referred to as “CITY”) is releasing this Request for Qualifications and Proposal (RFQ/RFP) to interested consultant firms (hereinafter referred to as “CONSULTANT”) to provide them with the opportunity to submit proposals for professional structural engineering consulting services for the Julian Street Bridge at Coyote Creek Seismic Retrofit Project, (hereinafter referred to as the “Project”).
- 1.2 Proposals should be prepared for the scope of services described in Section 3 below.

SECTION 2 – GENERAL INFORMATION

After the Loma Prieta earthquake, Caltrans reviewed all the bridges in the City of San Jose and rated each structure for seismic adequacy. The Julian Street Bridge at Coyote Creek (Bridge ID 37C0701) was identified by Caltrans as a candidate for additional seismic strengthening to meet current Caltrans seismic design standards.

The primary funding sources for the Project include the local share of the federal Highway Bridge Replacement and Rehabilitation (88.53%) and the CITY funds (11.47%). The authorization to proceed for the Project preliminary engineering was approved by Caltrans on June 27, 2006.

SECTION 3 – SCOPE OF SERVICES

CONSULTANT shall provide engineering design, prepare the final plans, specifications and engineer’s estimate and provide construction support for the seismic retrofit of the Julian Street Bridge at Coyote Creek. The CONSULTANT services will be performed in three phases.

Phase 1 services will consist of Preliminary Engineering. **Phase 2** services will consist of providing Final design, securing permits from other agencies, bid and award services. **Phase 3** services will consist of providing construction support services during construction.

A. PHASE 1 - PRELIMINARY ENGINEERING

The CONSULTANT shall prepare preliminary design plans and perform other services as further detailed below. CONSULTANT is responsible to research and collect all available as-built, right-of-way data, and utility plans for Phase 1.

Task 1 - Topographic Survey

CONSULTANT shall perform topographic survey of the Project areas as described below and as necessary for the Project.

- a) Julian Street: 250 lineal feet west and east of centerline of Coyote Creek.
- b) Coyote Creek: 100 lineal feet south and north of centerline of bridge from top of bank to top of bank.

Topographic survey shall include but not limited to the following:

- Street and Bridge topography, within public right-of-way including surface and overhead utility structures, and adjacent streets/ intersections.
- Potential Contractor lay down area and equipment staging areas within the northeast and southeast parking area at San Jose High School property.
- Creek topography within SCVWD and public right-of-way, from top of bank to water surface level to top of bank, including storm outfalls, potential access points and detailed tree survey.

CONSULTANT shall research public records and obtain copies of available survey maps, onsite and offsite improvement plans, as-built or record utility plans pertinent to the required survey.

CONSULTANT shall obtain the available descriptions of survey monuments, to reference the horizontal and vertical data upon which the work is to be based.

Deliverables:

- *Topographic Map including right-of-way, utility mapping and tree surveys*
- *Electronic Files -Topographic Map on CD-Rom in AutoCAD, Release 2000 or later, or in Microstation, version 7 or later*
- *Survey shots in ASC II format*

Task 1.2 - Geotechnical Investigation

CONSULTANT shall conduct a subsurface investigation to evaluate the soil conditions and seismic design requirements. The work shall include but not limited to the following:

- Research and Data Collection: Supplemental review of available published geologic and soils literature with respect to the project and surrounding areas.
- Permits: Comply with requirements for necessary encroachment permits from the CITY, SCVWD and other agencies, if required. CONSULTANT will notify USA and obtain necessary utility clearances for field exploration work.
- Field Exploration: CONSULTANT shall drill one field boring to a maximum depth of 80 feet at site approved by CITY to explore the subsurface conditions for the bridge. The borehole will be grouted per current Santa Clara Valley Water District (SCVWD) requirements. CONSULTANT will dispose of soil cuttings from the drilling work.
- Classify and continuously log subsoil encountered in each test boring at the time of drilling. Obtain relatively undisturbed and bulk samples of substrata from the test boring.
- Laboratory Testing: Perform laboratory tests on representative soil samples including moisture density, gradation analyses, plasticity index, direct shear, unconfined compression, consolidation and corrosion tests, etc. as determined by CONSULTANT.
- Soils Analysis/Evaluation: Perform engineering analyses and develop design recommendations for the proposed foundations.

- Prepare Draft Foundation Memo: Prepare preliminary recommendations for foundation and provide a Seismic Strategy Report (Geotechnical) with the LOTB.
- Prepare Final Foundation Report: Prepare detail report including design recommendations for foundation types and footing elevations lateral design capacities, pile foundation recommendations or spread footings.
 - o The Geotechnical Report shall discuss seismic considerations, evaluate the liquefaction potential and comment on the site soil conditions from this standpoint. Information related to Caltrans Seismic design criteria such as depth to rock-like material and peak rock acceleration shall be provided.
 - o Prepare the Geotechnical Report in accordance with Caltrans and the CITY's requirements, documenting the work performed, physical data acquired and geotechnical design recommendations.
- Provide design review consultation through final design.

Deliverables:

- *Draft Foundation Memo (5 copies)*
- *Draft Foundation Investigation Report (5 copies) (See Task 2.1)*
- *Final Foundation Investigation Report (5 copies) (See Task 2.2)*

Task 1.3 – Seismic Retrofit Type Selection

CONSULTANT shall investigate feasible seismic retrofit alternatives for the bridge and recommend a minimum of two alternatives, and prepare construction cost estimate for each alternative. The CONSULTANT shall confer with the CITY to select the preferred alternative. The CONSULTANT shall prepare a Bridge Seismic Retrofit General Plan for the selected alternative and prepare a Type Selection Report both in accordance with current Caltrans standards and as required for federal funding. The Report shall include construction cost estimate. This work will address the traffic controls and detours required for construction, if necessary.

This task shall include but not limited to the following:

- a) As-built Structure Vulnerability Analysis
- b) Seismic Retrofit Strategy Development
- c) Prepare Draft Retrofit Strategy Report for review by CITY and Caltrans
- d) Conduct Retrofit Strategy Meeting with CITY and Caltrans Personnel
- e) Prepare Final Retrofit Strategy Report

Deliverables:

- *Draft Retrofit Strategy Report including General Plan and Estimate (5 copies to CITY and 10 copies to Caltrans)*
- *Retrofit Strategy Meeting Minutes (1 copy per attendee)*

- *Final Retrofit Strategy Report including General Plan and Estimate (5 copies to CITY and 10 copies to Caltrans)*

Task 1.4 – Environmental Clearance

- Identify the Area of Potential Effect (APE) for environmental studies.
- Conduct Natural Environment Study (NES) report level reconnaissance surveys of the biotic resources of the project site to characterize its plant and animal communities and arrive at a preliminary determination regarding the site's potential to support suitable habitat for special-status plant and animal species. Delineate into topographic base map the extent and distribution of riparian habitat and potential jurisdictional waters within the APE for inclusion in NES report.
- Conduct historic structure and archeological/cultural resource studies in compliance with Section 106 of the National Historic Preservation Act.

Deliverables:

- *Draft Natural Environmental Study (5 copies)*
- *Draft Archeological/Cultural Resources Report (5 copies)*

B. PHASE 2 - FINAL DESIGN -

CONSULTANT, to the satisfaction of the City, shall complete the final plans, specifications, and engineer's estimate for the project. The work also includes providing for utilities/utility relocations if necessary, obtain permits, and phased bridge construction.

The final plans shall show in detail, for construction purposes the scope, details and measurements of work to be performed by the contractor. The special provisions shall be prepared in conjunction with the 1992 City of San Jose Standard Specifications, and July 2002 Caltrans Standard Specifications. The special provisions shall include, but not be limited to, all items necessary to correctly define and control the construction work to be performed. As required by CITY, the CONSULTANT shall attend meetings with the CITY to review plans, specifications, and construction contract documents. At such times as CITY requests, attend conferences with representatives of CITY and such other public entities or private entities as CITY may designate. The CONSULTANT shall prepare and deliver final submittals as detailed below. Each submittal shall incorporate the CITY's comments on the previous submittal.

Task 2.1 – 65% Plans and Specifications Submittal

- Utility Research - CONSULTANT shall identify all existing utilities within the Project area and contact public utility companies to obtain records of their utilities. If it becomes necessary to protect in place or relocate any facilities that conflict with the proposed Project, the CONSULTANT shall work with the utility companies to establish the requirements for relocating the facilities. CONSULTANT will also prepare Utility Occupation Drawing showing existing and proposed utilities.
- Prepare Project's draft technical specifications, plans and construction estimate.
- Prepare draft Foundation Report to include design recommendations and log of test boring.
- Prepare draft Bridge Hydraulic Study Report including
 - Hydraulic analysis of retrofit structure
 - Scour analysis of retrofit structure

Deliverables:

- *Ten (10) sets of Plans in the City standard format and draft, 24" x 36"*
- *One (1) copy of Cost Estimate*
- *Ten (10) copies of Technical Specifications*
- *Five (5) copies of draft Foundation Investigation Report*
- *Five (5) copies of draft Bridge Hydraulic Study Report*

Task 2.2 - 90% Plans and Specifications Submittal

CONSULTANT shall conduct Independent In-House Quality Control Review, address 65% Review Comments by CITY and In-House QA/QC and submit the 90% plans and specifications for review to all affected utility companies, SCVWD, and Caltrans.

Deliverables:

- *Ten (10) sets of updated plans, 24" x 36"*
- *Ten (10) copies of Project specifications including City general project specifications*
- *Two (2) sets of Bridge Seismic Design Calculations*
- *One (1) copy of updated Cost Estimate*
- *Five (5) copies of Final Foundation Investigation Report*
- *Five (5) copies of Final Bridge Hydraulic Study Report*
- *Five (5) copies of Natural Environment Study*

- *Five (5) copies of Archeological/Cultural Resources Report*

Task 2.3 - Permits

CONSULTANT shall coordinate the Project with the Regulatory Agencies (California Department of Fish & Game (CDFG), Regional Water Quality Control Board (RWQCB), Army Corps of Engineers (COE), SCWVD) to determine which permit is required for the Project. The CONSULTANT shall prepare and obtain applicable permits, based on the following assumptions:

- Federal funds will be used, necessitating both CEQA and NEPA clearance.
- Julian Street will not be closed to traffic during construction.
- The construction will be completed by October 30, 2008.
- The project will qualify for a Categorical Exclusion under NEPA and Categorical Exemption under CEQA.
- To expedite the permit process, the CONSULTANT shall pay applicable permit fees for CDFG, RWQCB and COE permits on behalf of the CITY.

Deliverables:

- *One (1) copy of each of the following permits:*
 - *Streambed Alteration Agreement from California Department of Fish & Game*
 - *Section 401 Water Quality Certification from Regional Water Quality Control Board*
 - *Nationwide Section 404 Permit from U.S. Army Corps of Engineers*
 - *Santa Clara Valley Water District Construction Permit*

Task 2.4 – 100% Plans and Specifications Submittal

Revise the plans, specifications and estimates to address 90% submittal comments from CITY, Caltrans, utility companies, and Regulatory Agencies. Submit 100% plans, specifications and estimate to CITY and Caltrans.

Deliverables:

- *Five (5) sets of updated plans, 24" x 36"*
- *Five (5) copies of Project Specifications including CITY general project specifications*
- *One (1) copy of updated Engineer's Estimate of construction cost*

Task 2.5 – Final Plans and Specifications Submittal

Address 100% PS&E review comments by CITY and Caltrans. Prepare sealed and signed final plans, specifications, and estimate package.

Deliverables:

- *One (1) set of signed original mylar final design plans, 24" x 36"*
- *One (1) printed set of final design plans, 24" x 36"*
- *One (1) original, "camera-ready" set of final specifications including City general project specifications and a signature page*
- *One (1) bound set signed final specifications*
- *One (1) electronic copy final specifications Microsoft Word 2003 or later*
- *One (1) final design plans on CD-Rom in Microstation, Version 7 or later*
- *One (1) copy final Engineer's Estimate of Construction Cost Estimate*
- *One (1) electronic copy final Construction Cost Estimate on CD-Rom, Microsoft Excel 2003 or later*

Task 2.6 - Assistance during bid and award

The CONSULTANT shall perform the following tasks to assist with bid and award as requested by CITY:

- Attend pre-bid conference.
- Assist in responding to pre-bid questions from bidders.
- Prepare addenda if required by CITY.
- Assist the City in evaluating bids to determine responsiveness.

C. PHASE 3 - CONSTRUCTION SUPPORT SERVICES

CONSULTANT shall:

- Attend pre-construction conference and four construction meetings as directed by the City Project Manager.
- Conduct pre-construction surveys of species of concern as required by the Natural Environment Study and project documents.
- Review Contractor's submitted baseline construction schedule, material submittals, shop drawings and requests for substitutions, and provide comments within five working days of a written request for review by the City Project Manager.
- Respond to requests for information (RFI's) from construction contractor to clarify Contract Documents. The typical time to respond in writing to an RFI shall be 5 working days or less.
- Prepare revisions to plans and specifications and estimates of the costs involved with these changes.

- Assist City staff, as requested by the CITY Project Manager, on Project issues that may arise during construction and make recommendations to resolve the issues.
- Provide advice and technical support for construction change orders, or construction claims.
- Provide observation of all construction of structural steel and miscellaneous metal erection items to ensure installation per the plans and specifications.
- Assist the CITY Project Manager with the final project inspection, and recommending acceptance of the project.
- Prepare record drawings showing changes made during the construction period, based on one master set of redlined prints prepared by the Contractor.

Deliverables:

- *One (1) set of original mylar record drawings, 24" x 36"*
- *One (1) CD-Rom of record drawings, Microstation, Version 7 or later*

SECTION 4 – SCHEDULE OF PERFORMANCE

Work shall commence immediately upon the issuance of Notice to Proceed (NTP) for each phase. In completing the SCOPE OF SERVICES, the schedule below will be followed. To allow for scheduling flexibility and to accommodate unforeseen circumstances, Exhibit F, entitled SPECIAL PROVISIONS in Attachment A, sets forth the method for changing the schedule.

<u>TASK</u>	<u>COMPLETION DATE</u>
A. Phase 1 – Preliminary Engineering	April 30, 2007
B. Phase 2 – Final Design	November 30, 2007
C. Phase 3 – Construction Support	November 30, 2008

SECTION 5 – NON-DISCRIMINATION AND AFFIRMATIVE ACTION

CONSULTANT shall comply with all City, State, or Federal provisions on discrimination and affirmative action as shown in Attachment A – Agreement for Consultant Services.

SECTION 6 – PROPOSAL CONTENTS

6.1 STATEMENT OF QUALIFICATIONS

A summary containing qualifications and experience of CONSULTANT on bridge seismic retrofit projects, experience working with regulatory and government agencies. Proposed approach to the services described in the RFQ/RFP.

6.2 PROJECT TEAM ORGANIZATIONAL CHART

This chart shall show names and positions of the Project Manager and key personnel for the proposed project team, and any sub-consultants. Provide project team staff and subconsultants qualifications and experience.

6.3 DBE PARTICIPATION

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs." In order to ensure Caltrans achieves its federally mandated statewide overall DBE goal, the Agency encourages the participation of DBEs, as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with Federal Funds. The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultants work.

6.4 COST PROPOSAL

Proposed costs for each phase of Project. The cost proposal for each phase shall be broke down to show cost for each subconsultant work, fee on subconsultants, costs for each Task, production, etc. The CONSULTANT shall submit a fee schedule that the charge rates should be applicable from November 1, 2006 thru December 30, 2007.

SECTION 7 – STANDARD TERMS AND CONDITIONS

CONSULTANT shall state its willingness to accept the terms and conditions in the Attachment A – Agreement for Consultant Services. CONSULTANT shall list items to which it takes exception, and provide alternate wording, if needed.

SECTION 8 – PROPOSAL SUBMITTAL PROCEDURE

CONSULTANT shall submit its proposal in accordance with the following requirements:

8.1 The proposal shall be transmitted with a cover letter which conforms to the followings:

- a. Is signed by an officer authorized to bind the CONSULTANT contractually.
- b. States that the proposal is firm for a 120-day period.
- c. Provide the name, title, address and telephone number of the individual to whom correspondences and other contracts should be directed during the consultant selection process.
- d. Provide cost proposal for each phase of the scope of services in sealed envelope.

8.2 The proposal shall be submitted as one original signed copy with two (2) photocopies.

8.3 The proposal shall be addressed to:

KATY ALLEN, DIRECTOR
Department of Public Works
200 East Santa Clara Street, Tower Floor 7
San Jose, CA 95113-1905
Attention: Paul Izadyar

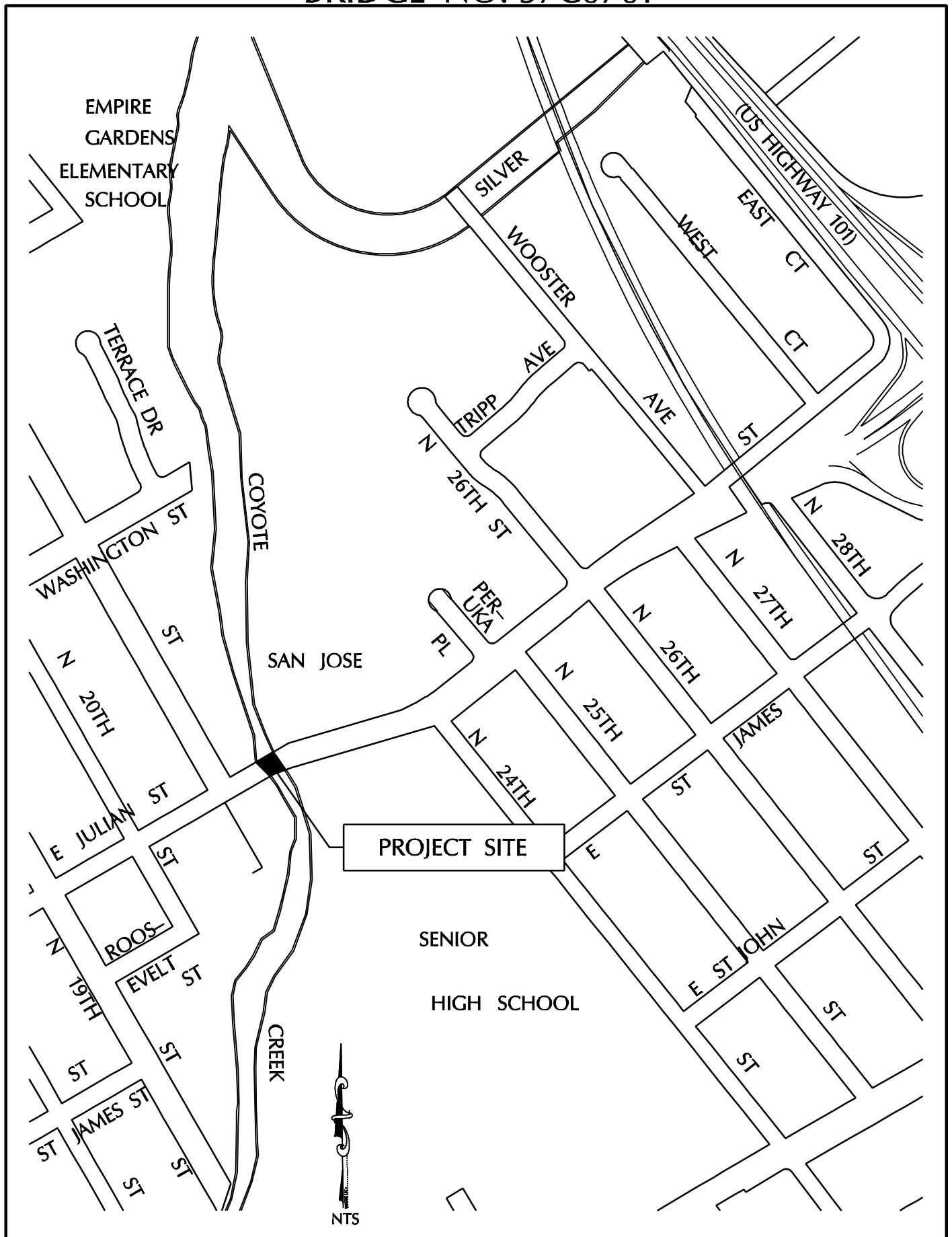
8.4 The proposal shall be received at the above address no later than 12:00 Noon on Tuesday, October 17, 2006.

8.5 Questions pertaining to the RFP, the Scope of Services or the CONSULTANT's proposal should be addressed to Paul Izadyar at (408) 793-4127.

SECTION 9 – CONSULTANT SELECTION PROCESS

- The CITY reviews materials submitted by responsive consultants, develops a short list of most qualified consultants for the Project. Proposals may be considered non-responsive and rejected without evaluation if all required information is not provided.
- All consultants that submitted proposals will be informed of the short list of most qualified consultants.
- The CITY will interview all consultants from the short list and notify them of the final ranking of the consultants.

JULIAN STREET BRIDGE OVER COYOTE CREEK BRIDGE NO. 37C0701



LOCATION MAP

ATTACHMENT A

AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND

THIS AGREEMENT is made and entered into this ____ day of _____ 2005, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and _____ (hereinafter "CONSULTANT").

RECITALS

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from _____ to _____, inclusive, subject to the provisions of SECTION 12 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed _____ Dollars (\$_____). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONSULTANT shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT's obligations hereunder, without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. SUBCONTRACTORS.

Notwithstanding the provisions of Section 7 above, the CONSULTANT may use the following designated subconsultants in performing the following work under this AGREEMENT:

The CONSULTANT shall be responsible for directing the work of the above-named subconsultants and for any compensation due to subconsultants. The CITY assumes no responsibility whatsoever concerning such compensation. Any substitution of a subconsultant must be approved by the CITY'S _____ in writing prior to commencement of services of the subconsultant.

SECTION 9. INDEMNIFICATION.

CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and

agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT to the extent caused by the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 10. INSURANCE REQUIREMENTS.

CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee (Risk Manager) of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 12. TERMINATION.

A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.

B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

C. CITY's _____ is empowered to terminate this AGREEMENT on behalf of CITY.

D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

SECTION 13. GOVERNING LAW.

CITY and CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 14. COMPLIANCE WITH LAWS.

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 15. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 16. OWNERSHIP OF MATERIALS.

- A. All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.
- B. CITY shall have the right to reproduce and use reports and documents developed pursuant to this AGREEMENT.

SECTION 17. WAIVER.

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 18. CONSULTANT'S BOOKS AND RECORDS.

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.

B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

SECTION 19. CONFLICT OF INTEREST.

CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

SECTION 20. GIFTS.

A. CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.

B. CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 12 of this AGREEMENT.

SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code (“Revolving Door Ordinance”). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 22. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, “SPECIAL PROVISIONS”, which is attached hereto and incorporated herein.

SECTION 23. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

City of San Jose
Department of Public Works
200 East Santa Clara Street, Tower 7
San Jose, CA 95113-1905

To CONSULTANT:

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 24. VENUE.

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 25. PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

Deputy City Attorney

By _____
Name:
Title:

“CONSULTANT”

[INSERT NAME]

By _____
Name:
Title:

EXHIBIT A
RECITALS

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services for _____; and

WHEREAS, _____, has the necessary professional expertise and skill to perform such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain _____ as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

EXHIBIT B
SCOPE OF SERVICES

1. CONSULTANT shall perform the following services:

EXHIBIT C
SCHEDULE OF PERFORMANCE

Work shall commence immediately upon execution of this AGREEMENT. The estimated time for completion is _____.

EXHIBIT D
COMPENSATION

CITY agrees to compensate CONSULTANT at the hourly rate of _____ (\$_____) for professional services performed in accordance with the terms and conditions of this AGREEMENT.

The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed _____ Dollars (\$_____). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

Reimbursable expenses shall include:

EXHIBIT E
INSURANCE

CONSULTANT, at CONSULTANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 including products and completed operations when applicable; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "nonowned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions.

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$100,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 Aggregate Limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. Insured. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. Contribution Not Required. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
 - c. Provisions Regarding the Insured's Duties After Accident or Loss. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY's Risk Manager.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSE
Department of Finance
Debt & Risk Management Division
200 East Santa Clara Street,
San Jose, California 95113-1905

G. **Subcontractors**

CONSULTANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT F
SPECIAL PROVISIONS

In the performance of this Agreement:

1. Prohibition on Discrimination and Preferential Treatment.

CONSULTANT shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin.

This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.

Nothing herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

2. Compliance Reports.

If directed by the Compliance Officer of the CITY, CONSULTANT shall file, and cause any subcontractor to file, compliance reports with the Compliance Officer. Compliance reports shall be in the form and filed at such times as may be designated by the Compliance Officer. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Compliance Officer to determine whether CONSULTANT or its subcontractor is complying with the nondiscrimination and nonpreference provisions of this Agreement and Chapter 4.08 of the Municipal Code.

3. Failure to Comply With Nondiscrimination Provisions.

If the Compliance Officer determines that the CONSULTANT has not complied with the nondiscrimination or nonpreference provisions of this Agreement, the CITY may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject CONSULTANT and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

4. Subcontracts.

CONSULTANT shall include provisions 1 through 3, inclusive, in each subcontract entered into in furtherance of this Agreement so that such provisions are binding upon each of its subcontractors.

5. Waiver of Nondiscrimination Provisions.

The nondiscrimination provisions of this Agreement may be waived by the Compliance Officer, if the Compliance Officer determines that the CONSULTANT has its own nondiscrimination requirements or is bound in the performance of this Agreement by the nondiscrimination requirements of another governmental agency, and the nondiscrimination provisions of the CONSULTANT or other governmental agency are substantially the same as those imposed by the CITY.